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Cambodia

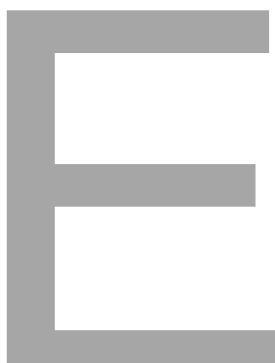
CMBD27 - Chan Cheng	CMBD76 - Ky Wandara
CMBD48 - Mu Sochua (Ms.)	CMBD77 - Lath Littay
CMBD49 - Keo Phirum	CMBD78 - Lim Bun Sidareth
CMBD50 - Ho Van	CMBD79 - Lim Kimya
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CMBD52 - Nut Romdoul	CMBD81 - Ly Srey Vyna (Ms.)
CMBD53 - Men Sothavarin	CMBD82 - Mao Monyvann
CMBD54 - Real Khemarin	CMBD83 - Ngim Nheng
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CMBD56 - Kong Sophea	CMBD85 - Ou Chanrath
CMBD57 - Nhay Chamroeun	CMBD86 - Ou Chanrith
CMBD58 - Sam Rainsy	CMBD87 - Pin Ratana
CMBD59 - Um Sam Am	CMBD88 - Pol Hom
CMBD60 - Kem Sokha	CMBD89 - Pot Pheu (Ms.)
CMBD61 - Thak Lany (Ms.)	CMBD90 - Sok Umsea
CMBD62 - Chea Poch	CMBD91 - Son Chhay
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CMBD64 - Chiv Cata	CMBD93 - Te Chanmony (Ms.)
CMBD65 - Dam Sithik	CMBD94 - Tioulong Saumura (Ms.)
CMBD66 - Dang Chamreun	CMBD95 - Tok Vanchan
CMBD67 - Eng Chhai Eang	CMBD96 - Tuon Yokda
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CMBD69 - Ke Sovannroth (Ms)	CMBD98 - Uch Serey Yuth
CMBD70 - Ken Sam Pumsen	CMBD99 - Vann Narith
CMBD71 - Keo Sambath	CMBD100 - Yem Ponhearith
CMBD72 - Khy Vanndeth	CMBD101 - Yim Sovann
CMBD73 - Kimsour Phirith	CMBD102 - Yun Tharo
CMBD74 - Kong Bora	CMBD103 - Tep Sothy (Ms.)
CMBD75 - Kong Kimhak	

***Decision adopted by the Committee on the Human Rights of
Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)***

The Committee,

Referring to the existing cases under file names CMBD27 and CMBD48-61, which all concern members from the opposition Cambodian National Rescue Party (CNRP), and to the decision adopted by the Governing Council at the 137th IPU Assembly (St. Petersburg, October 2017),

Seized of the new cases under the file name CMBD62-103, which it has examined and declared admissible pursuant to its Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices), and which concern the remaining 42 members of the National Assembly of the CNRP who lost their parliamentary mandate and were banned from politics following a ruling by the Supreme Court on 16 November 2017, which is referenced in detail further below,



Referring to the letters of 29 November, 13 and 18 December 2017 of the Secretary General of the National Assembly, as well as the information provided by the complainants and reliable third parties,

Referring to the hearing held with Mr. Sam Rainsy and Ms. Saumura Tioulong at its 155th session and to the numerous hearings held with both parties in the past as part of the Committee's effort to continue hearing both sides in a systematic manner to promote dialogue,

Referring to the final report on the Committee's visit to Cambodia in February 2016 (CL/199/11(b)-R.1),

Also referring to the IPU Presidential Statement on the state of democracy in the world issued at the 137th IPU Assembly,

Recalling the following information and allegations on file:

- The CNRP is the main opposition party in Cambodia and the only opposition party elected to parliament. The situation of 15 opposition parliamentarians, including the President and Vice-President of the CNRP, has been under examination before the Committee since 2014. At that time, the outcome of the 2013 parliamentary election was contested by the opposition, which claimed that it would have won the elections in the absence of fraud. The opposition had gained an unprecedented number of seats in parliament, with 55 members elected in the National Assembly (against 68 for the ruling Cambodian People's Party (CPP)) and 11 in the Senate (against 46 for the CPP) – therefore depriving the CPP for the first time of a two-thirds majority in the National Assembly;
- The complainants' claim that the ruling party has sustained a policy to weaken, silence and exclude the opposition in the lead-up to the 2017 and 2018 local and national elections by committing a series of abuses against opposition members of parliament along the lines of the long-standing patterns of abuse previously condemned by the IPU in past cases. Such abuses have allegedly included: (i) acts of intimidation and pressure; (ii) physical violence; (iii) political and judicial harassment characterized by multiple groundless criminal prosecutions, unfair trials and court convictions, as well as charges kept dangling to maintain a permanent threat of arrest; (iv) exclusion from political participation and from entry into Cambodia of the former leader of the opposition; and (v) threats of suspension and dissolution of the CNRP and of a ban on the political activities of its leaders pursuant to controversial fast-tracked amendments to the 1997 political party law that gave unprecedented power to the executive and judicial branches to suspend and dissolve political parties as well as their leaders;
- The position of the Cambodian authorities, including the National Assembly, has remained that no human rights violations were committed in the cases at hand and that all opposition parliamentarians concerned were criminals who must be punished by Cambodian courts in accordance with the law;
- Physical violence committed against opposition members of parliament has been met with persisting impunity, while all judicial proceedings that have been processed to the present date have concluded with the systematic convictions of the opposition parliamentarians concerned. Serious issues of due process, fairness and lack of independence of the judiciary have been observed, as well as violations of the rights to freedom of expression, peaceful assembly and association of the parliamentarians concerned;
- The previous leader of the CNRP, Mr. Sam Rainsy, was forced into exile and to resign from the party. He was convicted by the courts on numerous occasions in his absence and new charges have continued to be pressed against him. His successor, Mr. Kem Sokha, has also been targeted by threats and prosecutions. He was arrested on 3 September 2017 and faces a prison sentence of 15 to 30 years for charges of treason and conspiracy with a foreign power. He is detained in a remote prison in solitary confinement and under 24-hour video surveillance in his cell. Judicial proceedings are still ongoing against Mr. Kem Sokha and Mr. Sam Rainsy. Mr. Kem Sokha and Mr. Um Sam Am currently remain in detention, while all other CNRP parliamentarians have fled Cambodia;

- Following the arrest of Mr. Kem Sokha, the Prime Minister issued several public statements warning that the CNRP would face dissolution if it “dared to appear to protect” Mr. Kem Sokha, and that, in such case, other CNRP members would face similar charges. Since that time, opposition members of parliament have allegedly been labelled as “rebels”, placed under constant surveillance and repeatedly intimidated, according to the complainant. According to the information shared by Ms. Mu Sochua, Vice-President of the CNRP, during the hearing held at the 137th IPU Assembly most of the senior CNRP leadership and about half of opposition members of parliament, including herself, were forced to flee Cambodia out of fear of reprisals after they received a message warning them of their imminent arrest and of the impending dissolution of the CNRP. Ms. Mu Sochua expressed the view that Cambodian opposition parliamentarians and members no longer had any freedom to express their opinions, to meet or gather peacefully or to move around freely inside or outside of Cambodia. She feared for her safety and for the safety of all CNRP parliamentarians and members. She expressed the wish to return to Cambodia to continue exercising her parliamentary and opposition duties and ensure that the voice of the Cambodian people who elected the CNRP to parliament would be respected. She also expressed the wish of the CNRP for political dialogue to resume;
- The successive amendments to the 1997 political party law adopted in March and July 2017 have been couched in vague terms and are considered to be squarely at odds with accepted restrictions on the right to freedom of association under international law, particularly the requirements of necessity and proportionality. On 6 October 2017, the Minister of the Interior submitted an official request to the Supreme Court to dissolve the CNRP on the basis of the above-mentioned amendments. The complainant expressed fears that the Supreme Court would soon order the dissolution of the CNRP and would deprive the party members of their elective mandates conferred by the people at the national and local levels, as well as exclude them from campaigning and running freely and fairly in the general elections scheduled for 29 July 2018;
- The failure of the mechanism for dialogue established between the two main political parties represented in parliament (known as the “culture of dialogue”) to address and resolve the cases at hand and the subsequent collapse of any effective political dialogue since late 2015, as well as the failure of the judiciary to provide redress for the abuses committed,

Considering the following developments that have occurred since the 137th IPU Assembly and the information and allegations shared by both parties in that respect:

- The Cambodian authorities have denied bail to Mr. Kem Sokha who remains detained in solitary confinement. They have rejected the IPU Governing Council's request to allow a delegation of the Committee to visit him in detention. They have not responded to new allegations relating to the inhuman conditions of detention of Mr. Kem Sokha and denial of medical assistance. New criminal cases have continued to be brought on a regular basis against Mr. Sam Rainsy and to lead to systematic convictions. Former Senator Hong Sok Hour was released in October 2017 following a royal pardon, and Mr. Um Sam An has filed an application for a royal pardon;
- On 16 November 2017, the Supreme Court of Cambodia ordered the dissolution of the CNRP and banned a total of 118 CNRP leaders (including all 55 CNRP members of the National Assembly) from political life for five years after a one-day hearing and without any possibility of appeal. Their parliamentary mandates were immediately revoked and were given to small parties who did not win any seats at the last elections. All members of parliament have gone into exile out of fear of continuing reprisals;
- The complainant claims the following with regard to the Supreme Court decision:
 - The decision is groundless and purely motivated by political considerations. It stated that, before the ruling was issued, CNRP members were warned by the Prime Minister that their only choice was to join the ruling party or to be prepared for the dissolution and ban of their party. In its view, they are the ultimate measures taken by the ruling party to prevent the opposition from participating in the 2018 elections. It considers that the measures taken are arbitrary and violate the Constitution and laws of Cambodia, in particular the rights to freedom of

association and expression and the right to participate in the conduct of public affairs and to be elected;

- The Supreme Court has acted upon the instructions of the Prime Minister and has exercised neither independence nor impartiality. It pointed out that the composition of the Court itself precluded such independence and stressed, inter alia, that the presiding judge was a close friend of the Prime Minister and a prominent member of the ruling party. The CNRP declined to submit evidence in its defence or to send lawyers to the trial, as it viewed its outcome as predetermined;
- The constitutional provisions related to multi-party democracy and to the National Assembly have been violated. Replacing elected parliamentarians by appointed members of smaller parties closely aligned with the ruling party is a clear violation of article 1 and 76 of the Constitution. The latter clearly spells out that members of the National Assembly will be elected by “a free, universal, equal, direct and secret ballot”. It emphasizes that a significant part of the population of Cambodia has been arbitrarily deprived of parliamentary representation as a result of these measures and that the current National Assembly has no longer any integrity or legitimacy as it is not in compliance with the Constitution;
- In his letter of 13 December 2017, the Secretary General of the National Assembly confirmed the dissolution of the CNRP and stated that the Supreme Court decision was based on charges of conspiracy with a foreign country to overthrow the legitimate government. He pointed out that the National Assembly was still composed of four political parties and that the status of a multi-party parliament therefore remained in existence in Cambodia,

Considering that the Supreme Court decision, a copy of which was provided by the complainant, is seven lines long; that the judges have not provided any grounds for their decision and that no information has been provided by the Cambodian authorities on the replacement of the CNRP parliamentarians by appointed members of smaller parties,

Recalling that the amendments allowing for the redistribution of the CNRP seats to other parties in case of dissolution were adopted on 16 October 2017 – in the midst of the 137th IPU Assembly – and that the Cambodian delegation to the 137th IPU Assembly that was heard at that time told the Committee that it had been misinformed by the complainant and no such amendments were being contemplated or discussed in the Cambodian Parliament,

Taking into account reports by the United Nations and other international and regional organizations that the political space in Cambodia has dramatically shrunk following an unprecedented crackdown on critical media outlets and civil society, and that the range of laws and tactics being employed to restrict criticism of the Government and quell political debate has continued to widen,

Noting the international, regional and bilateral condemnations that have followed the dissolution of the CNRP, including the statement issued by the Office of the United Nations High Commissioner for Human Rights and the resolution adopted by the European Parliament on 14 December 2017, as well as the withdrawal of aid and the sanctions adopted by the European Union and the United States of America,

Bearing in mind the following in relation to Cambodia’s international obligations to respect, protect and promote fundamental human rights:

- As a party to the International Covenant on Civil and Political Rights, Cambodia is bound to respect international human rights standards, including the fundamental rights to freedom of expression, freedom of assembly, freedom of association, equality before the law and to a fair trial conducted by an independent and impartial court and to participate in public affairs;
- Following the second cycle of the universal periodic review (UPR) of Cambodia, conducted by the United Nations Human Rights Council in 2014, the Cambodian authorities accepted, inter alia, recommendations to “promote a safe and favourable environment that allows individuals and groups to exercise the freedoms of expression, association and peaceful assembly and put an end to harassment, intimidation, arbitrary arrests and physical attacks,

particularly in the context of peaceful demonstrations” and “take all necessary measures to guarantee the independence of justice without control or political interference” (report of the Working Group on the UPR of Cambodia (A/HRC/26/16)),

Also bearing in mind the fundamental principle of “liberal multi-party democracy” enshrined in article 1 and chapter 3 of the Cambodian Constitution, concerning the rights and obligations of Khmer citizens, in particular article 31, which states that “the Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights [...]”, as well as article 41, which enshrines the right to freedom of expression, and articles 80 and 104, which provide for parliamentary immunity,

Taking into account that, at the 137th IPU Assembly, the Executive Committee and then the Governing Council urged the IPU leadership to continue to engage with the Cambodian authorities to help them comply with international standards and work towards a more peaceful and stable environment for the next elections,

1. *Notes with consternation* that all 55 parliamentarians of the only opposition party elected to parliament were stripped of their parliamentary mandates and were banned from political life as a result of a Supreme Court ruling and on the basis of legislation which run completely counter to their individual and collective rights to take part in the conduct of public affairs and their right to a fair trial; *is deeply concerned* that all 55 opposition members of the National Assembly of Cambodia were promptly replaced by non-elected political parties allegedly aligned with the ruling party, which only reinforces the perceived political motivation for the Supreme Court decision;
2. *Concludes* that these latest repressive measures clearly constitute violations of the fundamental rights of the parliamentarians concerned; and *observes with regret* that they are sadly reminiscent of a long-standing pattern of abuse against the opposition that has been documented by the IPU before every election in Cambodia in the past;
3. *Is deeply concerned* that these measures leave the ruling party with no significant challenger ahead of the upcoming general elections and therefore deprive a significant part of the Cambodian population from parliamentary representation and from the ability to freely exercise their right to vote for the political representatives of their choice; therefore *expresses serious concerns* about the conduct of credible, free, fair and transparent elections in 2018;
4. *Urges* the Cambodian authorities to immediately reinstate all 55 members of the CNRP in the National Assembly, and to resume the political dialogue and allow the CNRP to field candidates for the upcoming elections; *reiterates its call* on the Cambodian authorities to take urgent measures to end the ongoing harassment of the CNRP and its members, as well as provide all appropriate guarantees to ensure that those who have gone into exile are able to return safely, without delay, to resume their political activities within the CNRP and to campaign freely in the run-up to the fast-approaching 2018 elections, without fear of reprisals;
5. *Seriously questions* the current integrity and legitimacy of the parliamentary institution as a whole in Cambodia in light of these recent developments and the lack of a level playing field in the lead-up to the general elections that go directly against the core principles of parliamentary democracy, multi-party liberalism and of a governance system based on the rule of law; *recalls* that, pursuant to the principles and values defended by the IPU, as enshrined in the Universal Declaration on Democracy adopted by the IPU in September 1997, “a state of democracy ensures that the processes by which power is acceded to, wielded and alternated allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit”; and *urges* for increased tolerance and acceptance of the role of the political opposition in Cambodia;

6. *Calls upon the IPU Governing bodies* to urgently review the situation in Cambodia with a view to helping ensure that the concerns spelt out in this decision are effectively addressed; *reiterates* the availability of the IPU to facilitate the resumption of a political dialogue and to mediate between the parties;
7. *Invites* the global parliamentary community, primarily through IPU member parliaments, as well as other relevant international, regional and domestic stakeholders, to engage in joint efforts to help resolve the current crisis in a manner consistent with democratic and human rights values, including by facilitating the resumption of a political dialogue, adopting public statements and making representations to the Cambodian authorities;
8. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
9. *Decides* to continue examining this case.